

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MATTHEW PINTO and	:	CIVIL ACTION
MILDRED BORISH	:	
	:	
v.	:	
	:	
THE TRAVELERS INSURANCE	:	
COMPANY, RONALD MIDDLETON	:	
and HART ASSOCIATES, INC.	:	NO. 99-1876

MEMORANDUM

O'NEILL, J.

SEPTEMBER , 2000

Plaintiffs commenced this action by filing a complaint in the Court of Common Pleas of Delaware County, naming Travelers Casualty and Surety Company, John Doe and John Doe Corporation defendants. Travelers removed the action to this Court. Thereafter, by stipulation the complaint was amended to name Ronald Middleton and Alan Hart Associates, Inc. defendants in place of the Doe defendants. Jurisdiction is based on diversity of citizenship.

Plaintiff Pinto alleged that he sustained personal injury when he was struck by a dark green minivan operated by an unidentified individual who was the agent or employee of Travelers.

Plaintiffs now concede that the van was operated by Middleton, an investigator employed by Alan Hart Associates. and that Travelers had hired Hart Associates to conduct surveillance of Pinto in connection with a claim for personal injuries he was prosecuting against Dunkin Donuts in the Court of Common Pleas of Delaware County as the result of injuries sustained by him in a Dunkin Donuts store in December, 1992. Dunkin Donuts was insured by Travelers.

It is not disputed that Hart Associates performed investigative services for Travelers as a "Contractor" pursuant to an Investigative Services Agreement dated December 11, 1995, and that

an attached Indemnification Agreement provides that Hart Associates is an independent contractor solely responsible for the actions of its agents and employees which indemnifies Travelers as to any claims arising from the acts or omissions of the agents and employees of Hart Associates.

Travelers has moved for summary judgement.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).

The party moving for summary judgment must state the basis for its motion and identify those portions of the record which it believes indicate the absence of any genuine issue of material fact. Celotex Corp. V. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). When the moving party does not bear the burden of persuasion at trial, it may properly support its motion merely by showing that there is an absence of evidence to support the non-moving party's case. Id. At 325, 106 S.Ct. 2548.

In response to a properly supported motion for summary judgment, the non-moving party must point to specific facts demonstrating that a genuine issue for trial exists. Fed.R.Civ.P. 56(e). It may not rest upon unsupported allegations or denials. Id.; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In order to demonstrate the existence of genuine issue of material fact, the non-moving party must raise more than a "mere scintilla of evidence:" It must produce evidence on which a jury could reasonably find in its favor. Id. At 248, 252, 106 S.Ct. 2505.

When considering a motion for summary judgment, a court must draw all reasonable

inferences in the light most favorable to the non-moving party. Id. at 255, 106 S.Ct. 2595. Moreover, a court may not consider the credibility or weight of the evidence in making its determination. Id.

The parties agree that under applicable Pennsylvania law a party generally is not liable for the negligent torts of its independent contractors. Mahon v. City of Bethlehem, 898 F.Supp. 310, reconsideration denied 902 F.Supp. 76 (E.D. Pa. 1995). While the determination of whether the employer-employee relationship exists is normally a question of fact for the jury, when the facts are not in dispute the question becomes one for determination by the court. Roebuck v. Gateway Freight, LLC, 1999 U.S. Dist.LEXIS 1812 (E.D.Pa. February 5, 1999) (citations omitted). An employee, as opposed to an independent contractor, is an agent whose "physical conduct in the performance of the service is controlled or is subject to the right of control by the master; that is, a master controls not only the results of the work, but the manner in which the work is to be performed." Such control involves "day-to-day control over the manner of the alleged servant's performance." Id. (Citations omitted).

The record on this motion consists of the Investigative Services and Indemnification Agreements, the Pinto, Borish, Middleton and Hart depositions, two pages of handwritten notes of Middleton, a four-page report of Hart Associates to defendant dated April 9, 1997, a Hart Associate's "case in-take form", a Hart Associate's two-page memo to file dated March 31, 1997, and two docket pages from the Pinto-Dunkin Donuts action.¹

I have reviewed this record. It does not contain even a scintilla of evidence that Travelers

¹ Plaintiff complains that Travelers failed to produce a copy of the "Request for Services" referred to in paragraph 1 of the Investigative Services Agreement; however, plaintiff did not move to compel its production.

controlled the manner in which the investigative work was to be done by Hart Associates and Middleton. There is nothing upon which a jury could base such a conclusion.

The motion for summary judgment will be granted.